

H. N. CUNNINGHAM

IBLA 72-367

Decided April 2, 1973

Appeal from decision of the New Mexico State Office, Bureau of Land Management, NM 8592, rejecting informal applications for an extension of a coal prospecting permit.

Affirmed.

Coal Leases and Permits: Permits

An application for an extension of a coal prospecting permit is properly rejected when it is filed subsequent to the expiration date of the permit.

APPEARANCES: H. N. Cunningham, pro se.

OPINION BY MR. GOSS

H. N. Cunningham has appealed to the Secretary of the Interior from a decision of the New Mexico State Office, Bureau of Land Management, dated March 22, 1972, which rejected his informal applications for extension of his coal prospecting permit, NM 8592.

These informal applications were rejected for the reason that they were not timely filed as required in section 6(a) and (b) of the permit and pursuant to Departmental regulations, 43 CFR 3511.3-2(a) and 3511.4-2(a).

The permit was originally issued January 1, 1970, for a period of two years ending December 31, 1971. The State Office held that when appellant's informal application was not received by the permit's expiration date, the permit expired by operation of law on December 31, 1971.

Appellant contends that a timely application for extension of his permit was made by a letter mailed during the month of December 1971, by United States mail from Houston, Texas, in such a manner as reasonably could be expected to be received in Santa Fe, New Mexico, before January 1, 1972. He asserts that failure of such letters to be received in a timely manner was not the fault of the applicant, but of the United States postal authorities. He alleges that a letter written by his wife was mailed on or about December 20, 1971, to the appropriate office of the Bureau

of Land Management with instructions to extend permit NM 8592. The record shows that this letter was not received until February 10, 1972. The envelope in which appellant's wife mailed the letter and check shows the canceled P.B. meter 279207 stamp on it, dated December 20, 1971, Houston, Texas. The envelope, however, contains a postal cancellation stamp from the Houston, Texas, Post Office, dated February 8, 1972.

Subsequent communications from appellant filed February 7, 1972, referred back to the request for extension of December 20 and submitted an additional check for \$ 400 together with two copies of an application for a coal prospecting permit. The filing fee of \$ 10 was also submitted with this application.

Departmental regulations 43 CFR 3511.3-2(a), 3511.3-4(b), and 3511.4-2(a) require that an application for extension must be filed in the proper land office within 90 days prior to expiration of the permit. If an application is not filed within the specified period, the permit expires without notice to the permittee. Notice of this rigid requirement for a timely filing for an extension is embodied in the terms of the permit in sections 6(a) and (b).

Appellant's application was not received by the State Office until 41 days after the expiration date of the permit. Appellant has not shown by substantial or convincing evidence wherein under the circumstances the Bureau's decision is in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Joseph V. Goss, Member

We concur:

Douglas E. Henriques, Member

Frederick Fishman, Member.

